Access to justice in environmental matters

Malta

I. Constitutional Foundations

The word environment does not appear anywhere in the Constitution of Malta and there are few provisions that may be relevant and applicable for environmental protection and access to justice in environmental matters. These are:

Article 9: State shall safeguard the landscape and the historical and artistic patrimony of the nation.

Article 33: The right to life of every citizen is guaranteed as a fundamental human right. The wording of the provision is wide and can be interpreted to include the right to a healthy environment as an aspect of the right to life. A case asking for such an interpretation however has never arisen before the Maltese courts.

Article 46 refers to the right any citizen has to initiate a constitutional case against the government before the law courts alleging that the latter is breaching human rights either with respect to him or any other person.

As stated in the paragraphs above, the cited provision are wide enough and the Maltese judges in a similar situation would probably look into similar case law in other European States and the European Court of Human Rights which accept the interpretation that the right to life includes the right to a healthy environment.

II. Judiciary

Malta's legal system is based on the continental civil law model. Maltese law owes its roots to Roman law, whilst public law has been greatly influenced by British law. The only sources of Maltese law are the Constitution, the Codes, the Acts of Parliament and subsidiary legislation that may be published under such Acts. The most Superior Court in Malta is the Constitutional Court which hears and determines specific disputes including the transgression of human rights. All cases relating to the transgression of human rights are heard before the First Hall of the Civil Courts and the Constitutional Court may then act as a court of last instance. There is a distinction between the criminal courts and the civil courts and both Courts are split into inferior and superior courts. The Judiciary is composed of two offices:

Judges who preside over the Superior Courts, as well as the courts of second instance (court of appeal) and the magistrates who preside over the inferior courts and conduct criminal inquiries. Inferior courts are less formal than superior courts and deal with civil disputes and criminal offences of a lesser degree. The criminal offense or civil action is brought before the relevant Courts of First Instance. Both parties in the dispute may appeal from the decision of the Courts of First Instance.

An individual may further appeal from the Court of Appeal's decision only under two circumstances:

(a) An EU citizen may allege the infringement of EU law in Malta before the Court of Justice of the EU.

(b) Only in human rights cases, an individual may take his case before the European Court of Human Rights if s/he is not satisfied by the decision of the Constitutional Court.

There are no specialized judicial bodies on environment matters. There are administrative bodies. Forum shopping is not really a possibility because Maltese laws clearly specify where judicial applications should be filed and concurrent jurisdiction does not arise. The only exception is the government that has the right to choose whether the civil dispute in which it is a Party should be dealt with by the First Hall Civil Court (Superior Court) or the Court of Magistrates Civil Jurisdiction (Inferior Courts). The First Hall of the Civil Courts also has jurisdiction over disputes that cannot be quantified. It is very rare that an action for civil damages in environmental disputes is made before the inferior civil courts because of the amount limit, and also because very often the Government is a party in the dispute. The main difference between the superior and the inferior civil courts is a formal one, especially in procedural matters.

One judge from the inferior civil courts presides over the Civil Court of Appeal while three judges from the First Hall preside over the Civil Court of Appeal. There is an equal opportunity for both parties to appeal from the decisions given in the inferior and superior civil Courts of First Instance. The appeal may be made against the sentence as a whole or against part of it. The appellant may launch an appeal against the respondent. The respondent may then reply in writing or launch a counter appeal on a different part of the judgment. When both parties wish to appeal from the decision of the Court of First Instance, one party appeals first, then the other makes a counter appeal on a different part of the judgment. The Court of Appeal can confirm the judgment in full or in part, or it can revoke the original judgment altogether. The decision of the Court of Appeal is final. The procedure relating to the appeal from the superior civil courts is again more formal than the one relating to an appeal from the inferior civil courts. There are also a number of tribunals which have an adjudication

function but which are not part of the law courts. These have limited and specific jurisdiction. The Constitutional Court acts as a court of appeal for all cases on transgression of human rights that are first considered by the First Hall of the Civil Courts in its constitutional capacity. If there is new evidence or serious flaws in the judicial process one can lodge a plea to have a retrial in criminal law and civil law. The grounds upon which this plea may be accepted are specified by law.

Title IV of the Code of Organization and Civil procedure provides for a new trial of a case decided by a judgment in the Civil Court where:

a) the judgment was obtained by fraud on the part of any of the parties;

b) the sworn application was not served on the party cast, and such party shall not have appeared at the judicial proceedings;

c) any of the parties to the suit was under legal disability to sue or be sued, provided no plea had been raised and determined;

d) the judgment was delivered by a court having no jurisdiction, provided no plea there had been raised and determined;

e) the judgment contains a wrong application of the law;

f) judgment was given on any matter not included in the demand;

g) the judgment was given in excess of the demand;

h) the judgment is conflicting with a previous judgment given in a suit on the same subject-matter and between the same parties, and constituting a res judicata and provided no plea of res judicata had been raised and determined;

i) where the judgment contains contradictory dispositions;

j) where the judgment was based on evidence which, in a subsequent judgment, was declared to be false or which was so declared in a previous judgment but the party cast was not aware of such fact;

k) where, after the judgment, some conclusive document was obtained and the party producing it had no knowledge of it, or which, he could not have produced, before the judgment in a manner allowed by law;

l) where the judgment was the effect of an error resulting from the proceedings or documents of the cause.

In the superior and inferior courts, the demand for a new trial shall be made, before a court of first instance, by means of a sworn application, and before a court of second instance, by means of an application; the application shall be accompanied by security for costs. The time for demanding a new trial is three months from the date of the judgment complained of or as applicable. A new trial may in no case be demanded after the lapse of five years from which the first judgment was given. The Court of Appeal has reformatory rights. It can amend and replace the decision of the Court of First Instance. There are no particular specificities for judicial procedures in environmental matters. When an environmental law is breached it gives rise to a civil action for damages either instituted by the public authorities or by third parties or both. If the damages claimed are less than 1000 Euros the claim is brought before the inferior civil courts. The plaintiff files a writ of summons which describes the facts of the dispute and then asks the court to declare the defendant responsible and assess the damages incurred. If damages are higher, the claim is to be made before the First Hall of the Civil Courts. In this case the summons must be accompanied by the declaration on oath and the list of witnesses the plaintiff wishes to summon. In the case of transgression of all environmental laws the offender is charged by the Police before the criminal courts. The Appeal procedures before the civil courts and the criminal courts for environmental matters are not any different from those applied in general. The court may adopt its own technical experts and carry out any inquiry as it may deem appropriate. Witness lists are brought by the Parties but the court is free to appoint its own experts to give information.

III. Access to Information Cases

Legal Notice 116/2005 The Freedom of Access to Information on the Environment Regulations, 2005 transposes Directive 2003/4/EC on public access to environmental information. According to its provisions, the applicant for environmental information may be a natural or a legal person. The applicant may request the competent authority, the Malta Environment and Planning Authority (MEPA), to provide him with any environmental information held by or for it or any other public authority, without having to state a direct interest as to why he requests the information. He may do so, in writing or by electronic mail. MEPA shall, if it has the requested environmental information in hand, provide the information to the applicant within thirty days from receipt of the request. The period shall be extended by a further thirty days if the volume and the complexity of the information cannot be provided in thirty days. MEPA shall notify the applicant of such an extension and explain why. MEPA may refuse to provide the requested environmental information if the information requested:

Is manifestly unreasonable, formulated in too general a manner or concerns material in the course of completion or unfinished documents or data. In the latter case MEPA shall state the name of the authority preparing the material and the estimated time needed for completion.

Concerns internal communications, taking into account the public interest served by disclosure.

Would adversely affect the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law, international relations, public security or national defense, the course of justice, the ability of any person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature,

Relates to the confidentiality because it affects commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest.

Affects the public interest in maintaining statistical confidentiality and tax secrecy, intellectual property rights, the confidentiality of personal data and/or files relating to a natural person where that person has not consented to the disclosure of the information to the public, if such confidentiality is provided for by national or Community law and unless a person has consented to the release of the information which is given on a voluntary basis.

May jeopardize the protection of the environment (e.g. the location of rare species).

The Regulations establish that the grounds for refusal shall be interpreted in a:

restrictive way,

on a case by case basis.

The public interest served by disclosure shall be weighed against the interest served by the refusal. The competent authority may not refuse the disclosure of environmental information where the request relates to information on emissions into the environment. According to Article 41 (1) (a) of the Environment and Development Planning Act (EDPA) if a request for environmental information is refused or wrongfully/inadequately answered by MEPA, a person may appeal before the Environment and Planning Review Tribunal. The time frame to appeal MEPA's refusal to answer a request for environmental information, or its answering inadequately or wrongly, is 30 days from the date when it communicates its decision to the applicant. The first hearing before the Tribunal shall be held within three months from the receipt of the appeal by the applicant. The decision of the Tribunal shall be final and binding if it is supported by the opinion of two of its three members. Decisions of the Tribunal are always public. An appeal from the Tribunal's decision may only be made on a point of law before the Court of Appeal (Inferior Civil Jurisdiction) within 20 days from the decision of the Tribunal. Nothing in the Regulations requires MEPA to include information on remedies available but the notification may include a reference. The courts may listen to evidence behind closed doors in order to have access to information that has not been disclosed. The courts would have the right to order MEPA or any authority to disclose information if justified by law on the basis of its right of review regarding any act or omission by a public authority.

IV. Access to Justice in Public Participation

MEPA is Malta's environment agency and regulator on environment and development planning issues. MEPA has the following bodies that decide on administrative procedures in environmental matters:
(a)The MEPA board is made up of no less than 13 and no more than 15 members, one of whom shall be the Chair. The role of the MEPA Board is to decide on any application relating to:
activities/developments of national or strategic significance,
national security or other national interests or which could affect the interests of other States/governments/applications in respect to development subject to an EIA,
Reconsiderations when the decision for reconsideration was taken by MEPA itself.
(b) MEPA's executive is made up of four directorates on:
environment protection,
development planning,
corporate services and enforcement.
(c) The directorates are subject to the overall supervision and control of the Authority and of the Chief Executive officer. The executive is responsible (amongst other things) for granting licenses and permits required under various laws on environmental and development planning.
(d)The Environment and Planning Commission (EPC) may have various divisions that deal with different types of applications (e.g. outside development zones, urban conservation areas etc.). The EPC shall always have 5 members per, sitting including the Chair. The MEPA executive body shall delegate to the EPC the role to determine any application for a permit EXCEPT for those which the MEPA board has to decide upon.
(e) The Environment and Development Planning Tribunal provides for appeals against administrative decisions taken by the administrative bodies listed above. This administrative adjudicating body is set up under the EDPA. It consists of 3 members. The Chair is a person well versed in environmental and development planning and the other members are a lawyer and an architect. There are panels with different people who rotate to sit in the tribunal as Chair or Members according to their expertise depending on the case before them. The secretary to the Tribunal is responsible for choosing the members according to the case.
Administrative remedies have to be exhausted before taking a case to court. The Environment and Planning Review Tribunal must hear appeals first and an appeal from the decision of the tribunal can only be taken to court on a point of law. Otherwise, the decision of the Tribunal is final. Land use plans, zoning plans, and other normative types of environmentally relevant decisions defining the use of space may be reviewed by courts by virtue of:
(a) Either their right to review decisions by public bodies as discussed under V below and/or
(b) If an applicant appeals from the decision of the Environment and Planning Review Tribunal on a point of law.
This situation applies for appeals from MEPA on:
(a) Decisions of the authority relating to development control
(b) The enforcement of such control
(c) Decisions made by the authority relating to environmental protection including environmental assessments, IPPC, environment information and remedying of environmental damage.
The EIA and the IPPC process would only be subject to the courts' review for procedural and substantive legality when the courts can intervene as explained above. It needs to be pointed out however that whilst the IPPC in itself constitutes a permit the EIA does not. Even if the EIA is approved it is a preparatory process that is required by law and MEPA would still have to assess the EIA submitted and take it into consideration when deciding whether to grant a permit or not. Standing before the national courts depends upon whether the process referred to above is satisfied. The courts may review the administrative decisions in cases of a MEPA permit only after the plaintiff has exhausted the administrative remedies and applied before the Tribunal referred to above. In all other cases if there has been an administrative act or omission that is subject to review in accordance with Part V of this report. The courts determine whether the plaintiff would have participated as an objector or an interested stakeholder. Although, environmental NGOs constituted by law to have environmental protection within their remit should, according to the IPPC and EIA regulations have legal standing.
There is no injunctive relief in the EIA process because the EIA is not a permit in itself. One cannot challenge an EIA process before the courts unless one can allege that in some way the process has been carried out contrary to law and may institute an action for access to justice against acts or omissions. This situation has never arisen. There are no special rules applicable to EIA procedures. There is no reference to injunctive relief in IPPC legislation. The same procedure as described for EIA may apply. However since the IPPC is a permit, the MEPA may impose a financial guarantee which it would forfeit if the permit is not abided by and it has the power to ask the operator to take all the necessary measures in cases of emergency so it could even issue an enforcement notice to close the plant.

V. Access to Justice against Acts or Omissions

The Code of Organization and Civil Procedure (COCP), namely Article 469A, provides for the judicial review of any act by the public sector only. The courts of justice of civil jurisdiction may investigate the validity of an administrative act by a public authority and declare it null and void, invalid, or without effect where the administrative Act is in violation of the Constitution and when the administrative Act is further beyond the scope of the public authority's power because of the following reasons:
(a) Such act emanates from a public authority that is not authorized to perform it;
(b) A public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative Act or in its prior deliberations thereon; or
(c) When the administrative Act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or when the administrative Act is otherwise contrary to law.
The term 'Administrative Act' includes the issuing by a public authority of:
any order, license, permit, warrant, decision, or a refusal to any demand of a claimant, but it does not include any measure intended for internal organization or administration within the said authority.
'public authority' is here defined as the Government of Malta, including its Ministries and departments, local authorities, and any corporate body established by law.
Under the COCP Article 469A, an action to impugn an administrative Act shall be:
Filed within a period of six months from the date when the 'interested person' becomes aware or could have become aware of such an administrative Act, whichever is the earlier.
The provisions of this article shall not apply where the mode of contestation or of obtaining redress is provided for in any other law.
The plaintiff can request payment of damages based on the alleged responsibility of the public authority, in tort or quasi tort, arising out of the administrative Act.

The court shall not award the said damages where, notwithstanding the annulment of the administrative Act, the public authority has not acted in bad faith, or unreasonably, or where the thing requested by the plaintiff could have lawfully and reasonably been refused under any other power.
The COCP therefore provides a general right to access to justice to any 'interested party' to ask the courts to review the validity of the administrative Act or the breach of any law.
A person may appeal from the decision of the court when it reviews the validity of an administrative Act under Article 469A of the COCP.
The length of time for lodging an appeal is the same as for other appeals before the Civil Courts. In the case of appeals from the Superior Courts before the Court of Appeal, the time is twenty days, which shall commence the date on which the judgment was delivered.
An appeal is entered by means of a note to be filed in the registry of the court by which the judgment appealed from was delivered.
An appeal may be entered for either the whole or only parts of the judgment and both the plaintiff and the defendant may appeal.
LN 126/2008 on the Prevention and Remedying of Environmental Damage Regulations, 2008, establishes a framework of environmental liability. The Competent Authority and the regulator is MEPA. These Regulations shall only apply to environmental damage or to an imminent threat of such damage, caused by pollution of a diffuse character, where it is possible to establish a causal link between the damage and the activities of individual operators. MEPA shall be entitled to initiate cost recovery proceedings against the operator or a third party who has caused the damage or the imminent threat of damage, in relation to any measures taken under these Regulations within five years from the date on which those measures have been completed, or the liable operator or third party has been identified, whichever is later. LN 126/2008 defines 'costs' as costs which are justified by the need to ensure the proper and effective implementation of these Regulations, including:
the costs of assessing environmental damage,
an imminent threat of such damage,
alternatives for action,
the administrative, legal, and enforcement costs,
the costs of data collection, and other general costs, monitoring and supervision costs.
'Damage' is defined as a measurable adverse change in a natural resource or measurable impairment of a natural resource service, which may occur directly or indirectly. MEPA shall:
establish which operator has caused the damage or the imminent threat of damage,
assess the significance of the damage, and determine which remedial measures should be taken with reference to Schedule II.
MEPA may require the relevant operator to carry out his own assessment and to supply any information and data as necessary. MEPA may empower or require third parties to carry out the necessary preventive or remedial measures. Any decision taken pursuant to these Regulations which imposes preventive or remedial measures shall state the exact grounds on which it is based. Such decision shall be notified forthwith to the operator concerned, who shall at the same time be informed of the remedies available to him under the relevant laws concerned and of the time-limits to which such remedies are subject. Natural or legal persons affected, or likely to be affected, by environmental damages, or having a sufficient interest in environmental decision-making relating to the damage, shall be entitled to submit to the Competent Authority any observations relating to instances of environmental damage of which they are aware. They shall be entitled to request MEPA to take action under these Regulations.
A person shall be deemed to have a 'sufficient interest' if he is a registered objector according to the EDPA or if he qualifies as a consulted or an identified stakeholder under the provisions of the Environmental Impact Assessment Regulations, 2007.
The interest of any non-governmental organization promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of qualifying as a person with 'sufficient interest'.
The request for action shall be accompanied by the relevant information and data supporting the observations submitted, in relation to the environmental damage in question.
Where the request for action and the accompanying observations show in a plausible manner that environmental damage exists, MEPA shall consider any such observations and requests for action. In such circumstances MEPA shall give the relevant operator an opportunity to make his views known, with respect to the request for action and the accompanying observations. MEPA shall, as soon as possible and in accordance with the relevant provisions of national law, inform the persons with a sufficient interest that submitted observations to the Authority, of its decision to accede to, or refuse the request for action and shall provide the reasons for it. It is MEPA then who proceeds with taking the case to the courts alleging that an operator should be found guilty of environmental liability. To date MEPA has not had the opportunity to initiate such an action before the Maltese courts.

VI. Other Means of Access to Justice

The general public may resort to the Ombudsman under the Ombudsman Act, to seek his opinion as to whether a Ministry or any other public entity exercised its duties in a fair and equitable manner. The decision of the Ombudsman is not binding. There is also an auditor for MEPA within the Ombudsman's office which is specifically responsible for MEPA related issues. Any individual may have recourse to the Users' Committee, where he may query practices undertaken by MEPA when exercising its powers and ask the Chairman of the Users' Committee to investigate it and pronounce his views on the matter. The decisions of the Chairman of the Users' Committee are not binding. Private criminal prosecution is not available in environmental matters.

VII. Legal Standing

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	X	Must prove direct interest except in breach of human rights under the Constitution. Either is a registered objector for a development planning permit or a consulted or an identified stakeholder under the provisions of the Environmental Impact Assessment Regulations, 2007.
NGOs	X But they must be register as objectors.	Only Exists under EIA and IPPC and right of access to information with respect to the right to review a decision by the authority. In environmental liability EIA IPPC non-governmental organization promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of qualifying as a person with 'sufficient interest'. When contesting development planning permits they may resort to court only after exhausting administrative remedies and only on a point of law. In a recent case the Court still interpreted their sufficient interest to require that they should have registered themselves as objectors.
Other legal entities	X But they must register as objectors.	Only if they have a remit that is applicable to the case.
Ad hoc groups	Only if in their personal	Only if in their personal capacity and if there is a direct interest

	capacity and if they register as objectors.	
foreign NGOs	Only if they are NGO s registered in the EU.	Apart from the above re NGOs the foreign NGOs have to be registered in the EU.
Any other		

In a recent case the Court dismissed a plea made by an NGO for a claim against a private individual on grounds of lack of standing when the NGO claimed that this individual had breached the conditions of permit for development (land use) give to it by MEPA. The standing which NGOS have is strictly within the parameters provided by the law for access to environmental information rights EIAs and IPPC law. The NGO in question did not make a claim against the authority but against a private individual. The procedural rules are the same for all those sectors where the individual may object to an environmental or development planning permit. If a permit is issued any person may contest it as an objector and if the permit is awarded only the objectors may make a claim before the Environment and Development Planning Tribunal to appeal. Before the courts, an appeal on the same issue can only be made on a point of law and after the administrative remedy is exhausted. It is not likely that the courts would accept it because the courts would only accept access to justice by any individual if it is brought under the procedure described under 5 above. The only case of actio popularis that can be made by any person on behalf of another is for the breach of fundamental human rights listed in Constitution. Other state institutions or bodies (e.g. ombudspersons, public prosecutors) have no legal standing. Unless it is specifically stated in the applicable law as in the case of access to environmental information, EIA and IPPC legislation there is no right of access to justice for individuals that do not have a direct interest. Administrative remedies before the Environment and Development Planning Tribunal must first be exhausted and then an appeal can only be made on a point of law.

VIII. Legal Representation

Legal Counsel is obligatory. There is no different procedure for environmental cases. Legal Counsel follows usual procedures before civil and criminal courts. There is no specific system, usually any lawyer may take up an environmental case. Specialization in environmental law is not possible as Malta's economies of scale do not permit lawyers and legal firms to take up only environmental law cases, which are very rare. There is more involvement in the legal profession with development planning permits rather than environmental permits. The only group of Maltese lawyers that specialize specifically in environmental law are found in academia, namely within the department of environmental law and resources law at the Faculty of Laws. The department has at times given its advice even pro bono similarly it may be the case that lawyers assist environmental NGOs pro bono but there is no official legal entity/NGO that provides free legal advice on environmental matters.

IX. Evidence

The presentation of evidence in judicial proceedings for environmental matters is the same as in the general judicial system. Expert opinion is not binding on Judges in the sense that although they may call for experts they have the discretion to decide independently thereof. The Maltese legal system gives absolute discretion to judges; even previous case law is not binding although judges would look into it. Although judicial decisions have an executive title they are not 'law'.

X. Injunctive Relief

The court may order injunctive relief based on its discretion. There are no conditions in which administrative decisions can be immediately executed, irrespective of an appeal or a court action. The court can accept a warrant of prohibitory injunction in judicial proceedings only. The Code of Organization and Civil Procedure in Article 873 provides for a warrant of prohibitory injunction which is used to restrain a person from doing anything whatsoever which might be prejudicial to the person suing out the warrant. The court shall not issue such warrant unless it is satisfied that it is necessary to preserve any rights of the person suing out the warrant, and that prima facie such person appears to possess such rights. The application shall be served on the party against whom it is issued. That party shall file a reply within ten days. The court may, in urgent cases, reduce the said period in this subarticle. If the other Party does not oppose, the court may accede to the demand. The court may initially issue a provisional warrant for under such terms and conditions as it may deem necessary according to the case, and subsequently decide about the matter in a definitive manner. The court shall, after appointing the application for hearing, decide on its merits after receiving any evidence it deems fit, within the shortest time possible but not any later than one month from the day when the warrant had been filed and confirmed on oath and the parties have been duly notified. There is an appeal against the decision of the court regarding injunction.

XI. Costs

There are no specific cost categories an applicant would face for access to justice in environmental matters only. The court fees may range between 100 to 300 Euros, appeal itself costs around 170 Euros, and every notification costs 7 Euros. A rough estimate of expert fees would include a rate of 70 to 100 Euros for an hour of work. The warrant of prohibitory injunction costs 47 Euros and 7 Euros every notification. A deposit or a guarantee may be set by the court. There is absolute application of the loser pays principle although the person who is held liable usually has to pay for expenses incurred in the lawsuit by the other party. The court may however choose to apportion expenses.

XII. Financial Assistance Mechanisms

The courts cannot provide exemptions from procedural costs, duties, filing fees, taxation of costs, etc. in environmental matters. There are no other financial mechanisms available to provide financial assistance to applicants. There is no legal aid for civil law suits only for criminal law suits. So there is no legal aid available in environmental matters unless the person has committed a crime. Officially there is no pro bono legal assistance provided by law firms but NGOs mat have such assistance if legal firms opt to work for them gratuitously. There are no legal clinics dealing with environmental cases. There are no public interest environmental law organizations or lawyers in Malta.

XIII. Timeliness

The time limit to deliver a decision by an administrative organ is three months but it can be extended. There are no sanctions against administrative organs delivering decisions in delay. There are no time limits set by law for judicial procedures in environmental matters, both for the court and for the parties. The courts are not bound to decide by a time limit. The Maltese courts at times take long to decide a case: sometimes five, ten and even twenty years. There is no trend on what the typical duration of an environmental court case in different types of procedures is and there is no indication when the decision will be made. There is no deadline set for the court to deliver its judgment. There are no sanctions against courts delivering decisions in delay.

XIV. Other Issues

The public usually challenges decisions at the public consultation phase but may also challenge when the decision is made. There have not been many court cases only protests. There is no information on access to justice in environmental matters provided to the public in a structured and accessible manner in Malta. An arbitration system exists but this does not apply to access to justice on environmental matters, only for civil law disputes. Under the Environment

and Development Planning Act an out of court settlement exists but this applies only to criminal proceedings against people accused of infringing environmental laws. The situation does not apply to access to justice matters. Rather than mediation as such, which may occur, MEPA and the applicants and the objectors may hold informal meetings.

XV. Being a Foreigner

It is a constitutional right that no discrimination on the basis on race or nationality can be made. Use of different languages is allowed in court procedures and is such cases an interpreter is provided if need be. The right to a fair hearing guarantees that translation is provided and paid by the government in court procedures if need be.

XVI. Transboundary Cases

Describe procedural rules on cases that involve environmental issues in another country. (5 sentences)

The EIA Regulations LN 114/2006 provide for transboundary consultations. Where the Minister responsible for Environment is aware that a project in Malta is likely to have significant effects on the environment in another State, or where a State likely to be significantly affected so requests, the Minister shall send to the affected State as soon as possible and no later than when the Maltese public is informed, the following information:

(a) a description of the project, together with any available information on its possible transboundary impacts

(b) relevant information regarding the environmental impact assessment procedure

(c) information on the nature of the decisions which may be taken and shall give the affected State a reasonable time in which to indicate whether it wishes to participate in the environmental impact assessment procedure.

If the affected State which receives information indicates to the Minister that it intends to participate in the environmental impact assessment procedure, the Minister shall send information gathered regarding the proposed development to the affected State. The affected State shall enter into consultations with the Minister concerning, inter alia,

(a) The potential transboundary effects of the project and the measures envisaged to reduce or eliminate such effects

(b) The parties shall agree on a reasonable timeframe for the duration of the consultation period.

(c) The affected State may arrange for the information to be made available, within a reasonable time, to its authorities and the public in its territory, within the timeframe established by agreement between the Parties,

(d) the affected State shall forward its opinion to the Minister who shall forward it to MEPA

The transmission of information concerning potential transboundary impacts, and the receipt of information by the affected State, shall be subject to Maltese law. The Minister shall provide to the affected State the final decision on the proposed project along with the reasons and considerations including information about the public participation process on which it was based and any conditions attached thereto. There shall also be a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects. The Minister shall immediately inform the affected State and enter into consultations on the necessary measures that may be undertaken to reduce or eliminate significant adverse transboundary impact. MEPA shall furnish the Minister with all such documentation and information as he may request. LN 126/2008 Regulations on Remedying Environmental Damages also contains provisions concerning transboundary environmental damages where the environmental damage affects or is likely to affect other EU Member States. If environmental damage has occurred, Malta would need to provide sufficient information to the potentially affected EU Member States. The notion of public concerned in a transboundary context is the same as for nationals, any person whether legal or natural and environmental NGOs. There is no specific list of cases where individuals or NGOs could choose between courts of different countries. The choice would depend on the outcome of the courts taking cognizance of the case.

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